

# Exhibit A

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

MOTORS LIQUIDATION COMPANY  
f/k/a GENERAL MOTORS CORPORATION,  
*et al.*,

Debtors.

Chapter 11 Case No.

09-50026 (REG)

(Jointly Administered)

**AFFIDAVIT**

I, John N. Hanson, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am Common Counsel for a group of companies that banded together to respond to the United States Environmental Protection Agency (EPA) and the Indiana Department of Environmental Management (IDEM) concerning environmental conditions at a landfill in Grant County, Indiana, known as the Marion Bragg Site (“the Site”). The group of companies is known as the Marion Bragg Group (“the Group”).

2. The Group entered into the Marion-Bragg Participation Agreement in 1988 (“Participation Agreement”). Attachment 1. General Motors Corporation signed the Participation Agreement on March 28, 1988. Id. at 10. Among other things, under the Participation Agreement, each member of the Group committed to respond to the environmental conditions at the Site, to pay the costs of that response, and to allocate the costs of that response among themselves.

3. Later in 1988, the Group entered into a Consent Decree with the United States of America, on behalf of EPA, and with IDEM (“Federal Consent Decree”), in which the Group committed to implement and pay for the response to the environmental conditions at the Site.

Attachment 2 (relevant portions only). General Motors Corporation signed the Federal Consent Decree on September 29, 1988. Id. at 67. The United States District Court for the Southern District of Indiana entered the Federal Consent Decree on April 24, 1991. Id. at 63.

4. Under the Federal Consent Decree, each member of the Group is bound, among other things, to finance and perform the work called for by the Decree. Id. at 12, ¶ VI.A.1. That work includes:

- monitoring the Site for at least 30 years after construction work at the Site is complete (Id. at 19-20);
- conducting additional studies at the Site (Id. at 24-25);
- funding EPA's five-year periodic reviews of the Site (Id. at 26-27);
- performing any additional work deemed necessary at the Site (Id. at 28-29);
- submitting annual reports to EPA concerning the Site (Id. at 34); and
- reimbursing government oversight costs (Id. at 43-44).

5. In 1994, the members of the Group entered into a Final Judgment By Consent in the Huntington Circuit Court for the State of Indiana ("State Consent Decree") that re-adjusted the percentages that each company must pay for the costs incurred by the Group under the Federal Consent Decree and the Participation Agreement. Attachment 3. Under the State Consent Decree, General Motors Corporation's percentage of those costs was 11.27%. Id. at 2.

6. Because of the subsequent bankruptcy of Dana Corporation, a Group member, its 3.44% percent cost sharing percentage had to be assumed pro rata by the remaining members of the Group. Therefore, General Motors Corporation's share became and is now 11.67%.

7. The Group's consultants have estimated the costs for which each member of the Group will be responsible under the Federal Consent Decree and the Participation Agreement until those obligations are expected to end in 2026. Those cost estimates are presented in Attachment 4.

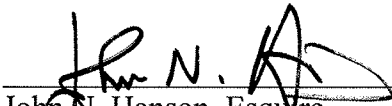
8. General Motors Corporation's share of those costs is 11.67% of \$1,130,000.00, or \$131,871.00.

9. From November 2009 to January 2011, our records reflect that the Marion Bragg Group incurred costs of \$102,996.23, broken down into the following categories:

- a. Technical consultants: \$44,575.30
- b. Legal fees: \$41,308.64
- c. Fees paid to the U.S. Environmental Protection Agency: \$9,738.36
- d. Fees paid to the Indiana Hazardous Substance Response Trust Fund: \$7,373.93

10. General Motors Corporation's 11.67% share of the total fees incurred from November 2009 to January 2011 is \$12,019.66.

Executed on February 16, 2011 at Washington, D.C.

  
\_\_\_\_\_  
John N. Hanson, Esquire  
Common Counsel for the Marion Bragg Group  
Beveridge & Diamond, P.C.  
1350 I Street, N.W., Suite 700  
Washington, D.C. 20005  
202-789-6015

# Attachment 1

MARION  
7

MARION-BRAGG PRP PARTICIPATION AGREEMENT

WHEREAS, many companies, governmental entities and individuals have received a letter from the United States Environmental Protection Agency indicating that they are Potentially Responsible Parties ("PRPs") pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, and its amendments, ("CERCLA") for conditions at the Marion-Bragg site in Grant County, Indiana; and

WHEREAS, many other companies, governmental entities and individuals have utilized, directly or indirectly, the site for waste disposal; and

WHEREAS, the PRPs recognize that there are substantial efficiencies in responding to the site on a cooperative basis; and

WHEREAS, the PRPs desire to establish a Steering Committee to coordinate their joint efforts; and

WHEREAS, the Steering Committee will incur certain expenses on behalf of all PRPs; and

WHEREAS, the PRPs are presently conducting negotiations with the State of Indiana and the United States Environmental Protection Agency for a proposed Remedial Action Plan (RAP); and

WHEREAS, the PRPs are desirous of performing the RAP and having a determination of a final allocation performed pursuant to the terms of this Agreement;

WHEREAS, the PRPs must allocate such expenses without establishing any precedent as to final allocation; and

WHEREAS, the PRPs recognize that they desire to avoid litigation amongst themselves and arrive at a final allocation within the context of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the participating PRPs hereby contractually agree as follows:

1. It is understood and agreed that participation in any joint effort is in no way to be construed to be as admission with respect to liability. No party hereto admits any liability, past or present, by virtue of execution or performance of this Agreement.
2. The parties hereto hereby empower John Hanson, common counsel, to employ through his law firm, Beveridge and Diamond, both the investigator and the third-party neutral. It is the intent of the parties that the work product of the investigator and the third-party neutral be work product prepared at the request of common counsel in anticipation of litigation, and, therefore, incapable of discovery.
3. If the parties successfully enter into a Consent Decree to perform the RAP then all monies raised pursuant to this Agreement will be used only for the costs of implementation of the RAP, and final allocation work performed by the investigator and the neutral defined herein.
4. The PRPs who execute this Agreement (Participating PRPs) shall voluntarily serve on a Steering Committee. The Steering Committee is responsible for directing the joint efforts

and expending jointly collected funds, and for public and governmental relations with regard to the activities of the Steering Committee as a whole. The Steering Committee is not empowered to speak on behalf of any individual PRP without express approval.

5. It is the objective of the Steering Committee to make decisions based on the unanimous consent of the participating PRPs. When this is not possible, the Steering Committee shall decide such matter by majority vote. Each committee member's vote shall be weighted in accordance with the member relative contribution to the joint expense fund as set forth in paragraph (11) below.

6. The Steering Committee shall be empowered to define the scope of work for, retain the services of, and contract with competent and qualified technical, legal and/or investigative consultants to assist the Steering Committee in its endeavors.

7. Each participating PRP agrees that all information, documentation, records and communications involving the site, or the participants' activities shall be held in strict confidence and not divulged outside of the context of the Steering Committee.

8. Each participating PRP waives all claims that it might have as to each other participating PRP arising out of the Marion-Bragg site except those claims and rights contained in this Agreement.



9. Each participating PRP agrees to be contractually bound by the terms of this Agreement and agrees any breach of this Agreement may be enforced by litigation. Any party found to be in breach shall be responsible for court costs, expenses and attorney fees with respect to that enforcement proceeding.

10. The Steering Committee shall establish a trust and/or escrow fund to be maintained by a treasurer appointed by the Steering Committee. The Steering Committee shall adopt procedures for the authorized payment of invoices. The treasurer shall provide an accounting of the funds to the Steering Committee as requested to do so by the Steering Committee.

11. Until such time as final allocation is determined, the participating PRPs agree that all expenses shall be allocated in the following manner:

a. Initial Funding

1. RCA - \$400,000.00
2. DiversiTech - \$400,000.00
3. General Motors - \$143,000.00
4. Dana Corp. - \$143,000.00
5. Owens-Illinois - \$143,000.00
6. United Technologies - \$143,000.00

b. In the event that all funds raised above are expended prior to the final allocation and additional funds are necessary, then all participating parties shall meet, in person or telephonically, for a single session in order to consentually arrive at a further interim funding mechanism. In the event that the parties fail to agree, then the neutral shall immediately determine the necessary final interim allocation so that the parties may fund ongoing responsibilities and activities.

c. The investigator and neutral shall not know or be informed of the initial funding mechanism under this Agreement, the interim funding mechanism hereunder, or the final interim funding mechanism agreed upon by the parties to this Agreement.

12.. Additional PRPs upon becoming signatories to this Agreement will be assigned by the Steering Committee to an appropriate financial participation level. The Steering Committee may require a late membership fee as a condition to becoming a participating PRP after the effective date. Additional parties shall be bound to all of the terms and conditions of this Agreement.

13. Each participating party agrees that the reasonable costs of ROA's independent investigation shall be reimbursed to each of these companies in accordance with the final allocation. This amount of money shall not apply towards the \$400,000.00 figure referred to in paragraph 14(b) below.

The reimbursement referred to within this paragraph shall only apply if such investigation is provided to all participating parties within 14 days of the effective date of this Agreement. The participating parties shall determine the reasonableness of the costs of these independent investigations by majority vote as defined within this Agreement. All signatory parties agree not to take any punitive action against any employee who has aided in the above-mentioned investigations.

14. The determination of final allocation shall be as follows:

- a. The Steering Committee shall hire Technical Environmental Consultants, Inc. to conduct a factual investigation with respect to final allocation, and either David Van Epps through The Center for Public Resources or Gene Berman of Clean Sites, Inc. as a third party neutral who will decide any dispute among the participating PRPs with respect to final allocation.
- b. The cost of the factual investigation shall not exceed \$300,000.00. The cost of the third party neutral shall not exceed \$100,000.00.
- c. The questionnaire identified as Exhibit "A" and attached to this Agreement shall be completed and verified by an officer of each participating PRP, and submitted to the investigator within 45 days of the effective date of this Agreement.

The completed additional questions shall be submitted to the investigator within 15 days of the receipt of the additional questions.

- d. Within 30 days of the effective date of this Agreement, each participating PRP may submit one or more allocation proposals. The elements of a proposal shall include the methodology for achieving a final allocation. The investigator shall use these submissions to narrow the scope of his investigation.
- e. A factual investigation will take place and be developed with respect to all Potentially Responsible Parties; however, primary emphasis shall be placed on the participating PRPs and certain non-participating PRPs identified by the Steering Committee. The participating PRPs agree to cooperate in this investigation.
- f. The factual investigation shall be completed within 90 days after submission to the investigator of the questionnaires referred to in paragraph 14(c) above.
- g. Upon completion of the investigation, the investigator shall submit all certified questionnaires and a report of the results of his investigation to the neutral. The participating PRPs shall have access to all completed

questionnaires and the investigator's report. The participating PRPs may submit comments on the investigator's report to the third party neutral within 21 days of the investigator's submission of the report to the neutral.

h. Any report that the investigator and/or the neutral shall render, if expressed in percentages, shall state a percentage for each participating party vis-a-vis the total costs necessary to be expended with respect to the site.

i. The parties then will be given up to 3 allocation sessions over a 21 day period to decide final allocation amongst themselves. This time period may be extended for 2 additional allocation sessions over the next 14 day period by vote of the Steering Committee. However, at all subsequent allocation sessions, an officer of each participating company must be in attendance. The neutral shall be a moderator during all allocation sessions but shall not express a position on allocation during those sessions.

j. The parties agree that should they not be able to agree to allocation amongst themselves, then the neutral shall render an allocation decision within 21 days. The neutral shall decide all issues using common sense and good judgment

consistent with CERCLA principles of decision making. The participating parties shall vote to accept or reject the decision of the neutral. Majority vote shall rule. Should the decision of the neutral be rejected, then the neutral shall reconsider its decision with the costs of reconsideration being borne by those parties who voted to reject the neutral's initial decision. The neutral shall render its reconsidered decision within 15 days. The participating parties shall vote to accept either:

1. The neutral's initial decision, or
2. The neutral's reconsidered decision.

Should the parties be unable to reach a majority vote with respect to the neutral's initial decision or the neutral's reconsidered decision, then the neutral's two decision shall be averaged together. The decision shall be binding upon the parties. The decisions of the third party neutral shall be admissible as evidence in a court of law, in camera, should any action be necessary to enforce the terms of this contract.

15. It is the intent of PRPs participating in this Agreement that non-participating PRPs of the Marion-Bragg site be sued by EPA and/or the Steering Committee, if necessary, for

their respective liabilities of this site.

16. The parties to this Agreement agree that this Agreement shall be capable of modification. Such modification shall only be effective upon unanimous vote of all the parties.

17. This participation Agreement shall terminate upon final allocation being reached pursuant to this Agreement. However, the parties specifically agree that the following provisions shall survive termination of the Agreement:

- a. waiver of claims
- b. binding nature of the allocation
- c. confidentiality and non-discoverability of the investigation.

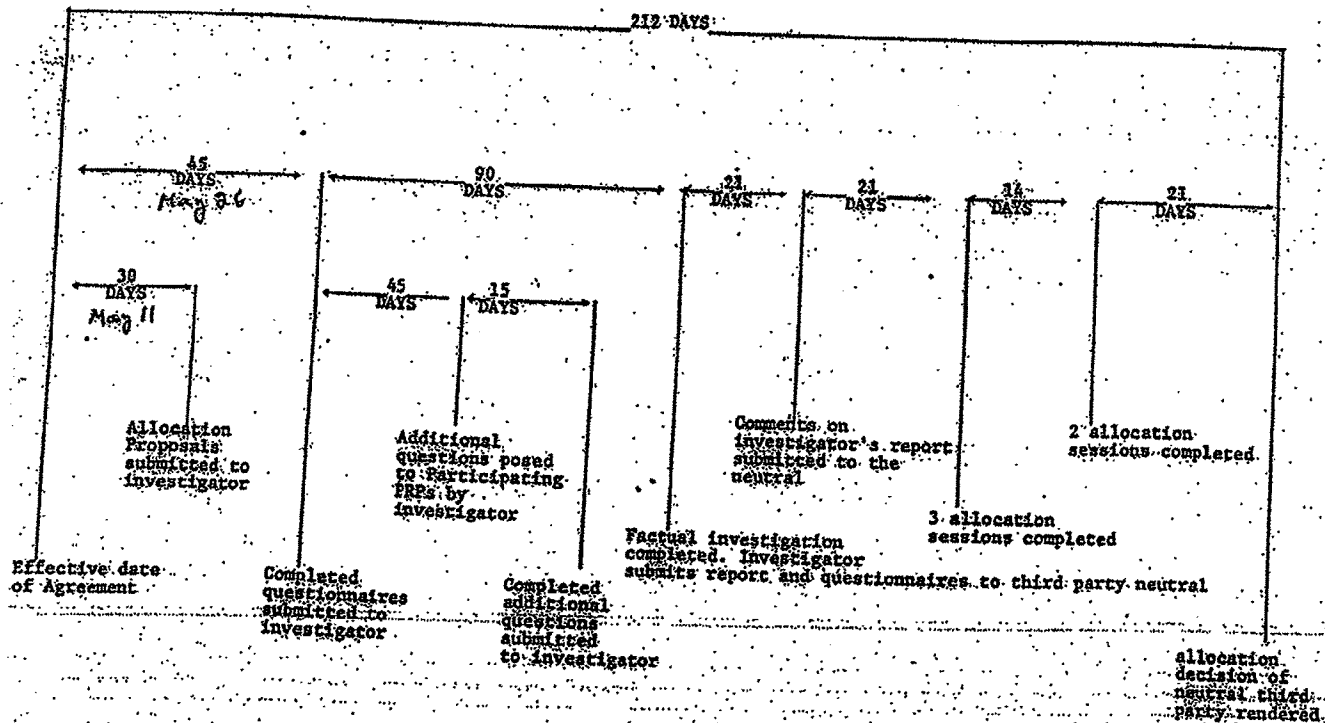
This Agreement has been executed by a duly authorized and empowered agent of the PRP.

SIGNATURE

SIGNATURE DATE

EFFECTIVE DATE

PARTICIPATION AGREEMENT TIME LINE





their respective liabilities of this site.

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This Agreement has been executed by a duly authorized and empowered agent of the PRP.

Clement Revetti, Legal Counsel  
SIGNATURE  
Dana Corporation

3/28/88  
SIGNATURE DATE

EFFECTIVE DATE

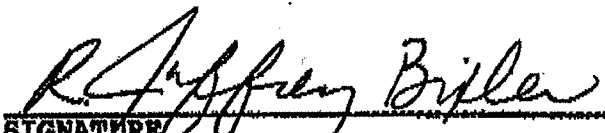
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- c. confidentiality and non-discoverability of the investigation.

This Agreement has been executed by a duly authorized and empowered agent of the PRP.

  
SIGNATURE  
ASST. SEC'Y - OWENS-ILLINOIS, INC.

3/29/88  
SIGNATURE DATE

EFFECTIVE DATE


their respective liabilities of this site.

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- a. waiver of claims
- b. binding nature of the allocation
- c. confidentiality and non-discoverability of the investigation.

This agreement has been executed by a duly authorized and empowered agent of the PRP.

  
\_\_\_\_\_  
William H. Trachsel  
Vice President and  
Deputy General Counsel  
United Technologies Corporation

April 7, 1988

\_\_\_\_\_  
DATE

\_\_\_\_\_  
EFFECTIVE DATE

their respective liabilities of this site.

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- a. waiver of claims
- b. binding nature of the allocation
- c. confidentiality and non-discoverability of the investigation.

This Agreement has been executed by a duly authorized and empowered agent of the PRP.

FOR RCA/GE

  
SIGNATURE

3/28/88  
SIGNATURE DATE

**EFFECTIVE DATE**

their respective liabilities of this site.

16. The parties to this Agreement agree that this Agreement shall be capable of modification. Such modification shall only be effective upon unanimous vote of all the parties.

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- a. waiver of claims
- b. binding nature of the allocation
- c. confidentiality and non-discoverability of the investigation.

This Agreement has been executed by a duly authorized and empowered agent of the PRP.

William J. Mc  
SIGNATURE

Approve  
Signature  
BHB

March 28, 1988  
SIGNATURE DATE

EFFECTIVE DATE

Based on conversation with  
Brombacher and Jack Heibel, the  
decision is to proceed and  
sign. CRSmua

[ 18 ] 3/28/88

their respective liabilities of this site.

16. The parties to this Agreement agree that this Agreement shall be capable of modification. Such modification shall only be effective upon unanimous vote of all the parties.

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- b. binding nature of the allocation
- c. confidentiality and non-discoverability of the investigation.

This Agreement has been executed by a duly authorized and empowered agent of the PRP.

Leonard F. Charles <sup>DZ</sup>  
SIGNATURE

March 28, 1998  
SIGNATURE DATE

EFFECTIVE DATE

## Attachment 2

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

RICHARD YOUNT, et al.,  
Defendants

CIVIL ACTION NO.

STATE OF INDIANA,  
Plaintiff

v.

RICHARD YOUNT, et al.,  
Defendants

CONSENT DECREE



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I.

BACKGROUND

This Consent Decree is made and entered into by and between the United States of America ("United States") on behalf of the United States Environmental Protection Agency ("U.S. EPA"); the State of Indiana ("State"); Dana Corporation, DiversiTech General, Inc., General Motors Corporation, Owens-Illinois, Inc., RCA Corporation, and Essex Group, Inc., collectively hereinafter the "Generator Defendants;" Richard Yount, hereinafter the "Owner Defendant;" and the City of Marion, Indiana, hereinafter the "City Defendant." These Defendants are collectively referred to as "Settling Defendants."

WHEREAS, the United States Environmental Protection Agency ("U.S. EPA"), pursuant to § 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605, placed the Marion/Bragg Dump in Grant County, Indiana (the "Facility" as specifically defined in Paragraph V of this Consent Decree) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658 (1983);

WHEREAS, in response to an alleged release or a substantial threat of a release of a hazardous substance at or from the Facility, the U.S. EPA in May, 1985, authorized a Remedial

WHEREAS, in consideration of, and in exchange for, the promises and the mutual undertakings and covenants herein, and intending to be bound legally hereby, the Plaintiffs and the Settling Defendants, by their authorized representatives, have agreed to the entry of this Consent Decree as a final and enforceable Order of this Court.

NOW, THEREFORE, before the taking of any testimony and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed:

II.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto, pursuant to 42 U.S.C. § 9601 et seq., and 28 U.S.C. §§ 1331 and 1345. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III.

PURPOSE OF THIS DECREE

The parties agree that the purpose of this Consent Decree is to insure performance by the Settling Defendants of all work necessary to effectuate the interim remedial actions at the Marion/Bragg facility identified as appropriate in the Record of Decision and in the Remedial Action Plan attached hereto.

IV.

PARTIES BOUND

A. This Consent Decree applies to and is binding upon the undersigned parties and their successors and assigns. The undersigned representative of each Settling Defendant, the Attorney General of Indiana, and the Assistant Attorney General of the United States certify that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it. Settling Defendants shall provide a copy of this Consent Decree to the principal contractor or contractors hired to perform the work required by this Consent Decree and shall require that contractor to provide a copy thereof to any subcontractor retained to perform any part of the work required by this Consent Decree.

B. The Settlement Agreements between the Generator Defendants and the City of Marion and Richard Yount, which are attached to this Consent Decree as Appendices H and I, respectively, as between the parties thereto, are enforceable as a part of this Consent Decree.

V.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions apply:

- A. "Architect" or "Engineer" means the company or companies retained by the Settling Defendants to prepare the construction plans and specifications necessary to accomplish the remedial action described in the ROD and the RAP, which are attached to this Consent Decree as Appendices A and B, respectively.
- B. "City Defendant" means the City of Marion, Indiana.
- C. "Contractor" means the company or companies retained by the Settling Defendants to undertake the Work required by this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained.
- D. "Facility" means the "facility" as that term is defined at § 101(9) of CERCLA, 42 U.S.C. § 9601(9), which consists of a site located within the limits of Grant County, Indiana and as shown on the map attached as Appendix C.
- E. "Future liability" refers to liability arising after U.S. EPA's Certification of Completion is issued pursuant to Paragraph XXIX.
- F. "Generator Defendants" means Dana Corporation, General Motors Corporation, DiversiTech General Corporation, Owens-Illinois, Inc., RCA Corporation, and Essex Group, Inc.
- G. "Hazardous substance" shall have the meaning provided in § 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- H. "IDEM" means the Indiana Department of Environmental Management.

- I. "National Contingency Plan" shall be used as that term is used in § 105 of CERCLA, 42 U.S.C. § 9605.
- J. "Owner Defendant" means Richard Yount.
- K. "Parties" means the United States of America, the State of Indiana and the Settling Defendants.
- L. "Plaintiffs" means the United States of America and the State of Indiana, and their agencies and departments.
- M. "Remedial Action Plan" or "RAP" shall mean the plan for implementation of the interim remedial action determined by the U.S. EPA to be necessary and appropriate through its Record of Decision, including remedial design, remedial action and operation and maintenance of the remedial action at the Facility, which is attached hereto as Appendix B and incorporated herein by reference.
- N. "Response Costs" mean any costs incurred by the United States, the State of Indiana and Generator Defendants pursuant to 42 U.S.C. § 9601 et seq., in connection with the Facility.
- O. "Settling Defendants" shall mean the City Defendant, the Owner Defendant, and the Generator Defendants.
- P. "State" means the State of Indiana.
- Q. "United States" means the United States of America.
- R. "U.S. EPA" means the United States Environmental Protection Agency.
- S. "U.S. DOJ" means the United States Department of Justice.

T. "Waste Material" means any hazardous substance, as defined by 42 U.S.C. § 9601(14) and any associated contaminated material, or pollutant or contaminant as defined by 42 U.S.C. § 9601(33).

U. "Work" means the design, construction and implementation, in accordance with Paragraphs VII and VIII hereof, of the tasks described in the Remedial Action Plan, and any schedules or plans required to be submitted pursuant thereto; however, "Work" shall not include operation and maintenance activities at the facility which extend beyond termination of this Consent Decree pursuant to Paragraph XXIX below.

VI.

GENERAL PROVISIONS

A. Commitment of Plaintiffs and Settling Defendants:

1. Settling Defendants agree to finance and perform the Work as defined in Paragraph V.U., at their expense except for claims made and paid pursuant to Paragraph XXI.

2. The Work as defined in Paragraph V.U. shall be completed in accordance with the standards and specifications and within the time periods and in accordance with schedules established in Paragraph VII and in the RAP.

B. Permits and Approvals:

1. Except as exempted by § 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), all activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local,



in the RD/RA Work Plan and performance standards set forth in the ROD and RAP.

7. The following tasks shall be performed subject to the conditions set forth in this Paragraph and the requirements of the ROD and the RAP and the purposes and goals of this Decree:

a. Monitoring

(i) Description: The Generator Defendants shall construct, maintain, and periodically sample, in accordance with this Decree including the ROD, at least ten (10) monitoring wells and shall periodically sample the surface waters adjacent to the Facility from at least ten (10) locations to determine any final remedial work that may be required at the Facility and to determine the effectiveness and protectiveness of the interim remedy. Sampling at each of the locations and wells shall be conducted at least semiannually, and confirmatory samples shall be taken during the quarter following the sampling event that revealed the presence of a parameter requiring such confirmatory sampling.

(ii) Performance Standard: Installation, development and sampling of the monitoring wells shall be consistent with and subject to the requirements of "A Compendium of Superfund Field Operations Methods," EPA/540/P-87/001, dated December 1987. The monitoring points in the adjacent surface waters shall be selected as set forth in the RAP, and sampled in accordance with U.S. EPA guidance

provided to the Generator Defendants or their contractor or contractors. Analysis of samples collected shall include analysis of priority pollutants, except PCBs and pesticides on such list, and Indiana Department of Environmental Management conventional landfill parameters, including ammonia, and shall be conducted in accordance with the Quality Assurance Project Plan prepared in accordance with the U.S. EPA's 1980 "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" and with other applicable guidance provided by the U.S. EPA to the Generator Defendants or their contractor or contractors. Monitoring shall continue for a period of at least 30 years after the construction of the cap is complete, unless it can be demonstrated to the U.S. EPA's satisfaction that further monitoring is not necessary.

b. Fencing

(i) Description: The Generator Defendants shall design and construct, and the City Defendant shall maintain, in accordance with the requirements of this Decree including the ROD, a fence to prevent access to the site. The fence shall at a minimum be six feet in height, constructed of durable chain link galvanized material, supported at appropriate intervals by steel pipe and shall enclose the area of the Facility as indicated in Appendix C. Gates shall be provided at appropriate locations, and shall be of like height with the fence and provided with secure means of locking. Generator Defendants shall post, and City Defendant shall

e. Flood Protection

(i) Description: The Generator Defendants shall, in accordance with this Decree including the ROD, design and construct, and the City Defendant shall maintain, flood protection measures to protect the cap and cover in all areas of the Facility that lie within the 100 year floodplain.

(ii) Performance Standard: The flood protection measures are intended to protect the elements constructed in the floodplain, to prevent any washout, erosion or other damage to the cover and cap or to the monitoring wells, during a flood event up to and including a 100 year flood event. These measures may incorporate riprap, additional cover thickness, or other means in accordance with the requirements of Executive Order 11988 and the Indiana Flood Control Act, I.C. 13-2-22.

f. Additional Studies

(i) Description: The Generator Defendants shall conduct additional studies of the adjacent surface waters (the river, the on-site pond and the large off-site pond near the south boundary of the Facility) to determine that no unacceptable threat to human health or the environment results from release(s) of hazardous substances, pollutants or contaminants from the wastes on the Facility into the environment. These tests shall be performed in accordance with the requirements of the ROD and the RAP.

(ii) Performance Standard: The performance of the additional studies shall be consistent with and subject to the requirements of "A Compendium of Superfund Field Operations Methods," EPA/540/P-87/001, dated December 1987. The sampling and analysis shall be done in accordance with U.S. EPA guidance provided to the Generator Defendants or their contractors(s) and the site specific Quality Assurance Project Plan ("QAPP"), which will be subject to approval by U.S. EPA in accordance with Paragraph X of this Consent Decree.

g. Operation and Maintenance

(i) Description: The City Defendant shall have primary responsibility and liability for inspection and maintenance of any fence, including signs, the cap, and the flood protection measures that are constructed in accordance with this Decree, including the ROD. In the event that the City Defendant fails to discharge its obligation hereunder, the Generator Defendants shall be secondarily responsible and liable for such inspection and maintenance, notwithstanding any other provision of this Consent Decree, and the City Defendants shall reimburse the Generator Defendants for all costs incurred by the Generator Defendants in performance of this portion of the Work.

(ii) Performance Standard: The fence, including the signs, the cap, and the flood protection measures shall be maintained so that they continue to meet the performance standards for which they were designed and

constructed, which are set further in subparagraphs (b)(ii), (c)(ii) and (d)(ii) of this Paragraph, and other applicable requirements of this Consent Decree, including the ROD and the RAP. The fence, including the signs, the cap and the flood protection measures shall be maintained until it is demonstrated to U.S. EPA's satisfaction that further maintenance is not necessary to protect human health or the environment.

E. The Parties acknowledge and agree that they believe that the proper performance of the RAP and the RD/RA Work Plan will achieve the performance goals and standards set forth in the ROD and in the Consent Decree. However, nothing herein shall foreclose the Plaintiffs, prior to certification of completion, from seeking performance by the Settling Defendants of all terms and conditions including the performance goals and standards of this Consent Decree.

VIII.

U.S. EPA PERIODIC REVIEW TO ASSURE  
PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

A. Pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the Facility at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review or issuance of subsequent Records of Decision, U.S. EPA determines that further response action in accordance with §§ 104 or 106 of

CERCLA, 42 U.S.C. §§ 9604 and 9606, is appropriate at the Facility, the U.S. EPA may take or require such action in a subsequent administrative or judicial action. Generator Defendants reserve any rights they may have to contest or defend against any such action.

B. Nothing in this Consent Decree shall be construed to require the Generator Defendants to implement additional remedial action beyond that which is necessary to fulfill the requirements of the ROD.

IX.

ADDITIONAL WORK

A. In the event that the U.S. EPA in consultation with the State, or the Generator or City Defendants, determine that additional work, including but not limited to further investigatory work or additional removal or disposal of materials or further protective measures, is necessary to fulfill the requirements of the ROD and the performance standards and requirements of Paragraph VII above, the party or parties making such determination shall promptly notify the other parties in writing. Said written notification shall specify why such additional work is necessary and provide a schedule for completion. Any additional work shall be consistent with the requirements of the NCP. If the Generator or City Defendants do not agree that such additional work is necessary, they shall promptly provide notice pursuant to the

dispute resolution process set forth in Paragraph XV of this Consent Decree.

B. Any additional work determined to be necessary by the Generator or City Defendants shall be subject to the review and approval of the U.S. EPA in consultation with the State. Any disapproval by the U.S. EPA of additional work shall be accompanied by a statement of basis therefor.

C. Any additional work determined to be necessary by the Generator or City Defendants and approved by the U.S. EPA in consultation with the State, or determined to be necessary by the U.S. EPA in consultation with the State, shall be completed by the Generator or City Defendants in accordance with the standards, specifications and schedules provided by the U.S. EPA and the State.

X.

QUALITY ASSURANCE

Generator Defendants shall follow and apply, in all monitoring, sampling, and analysis procedures required under this Consent Decree, quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," (QAM-005/80) and subsequent amendments to such guidelines upon notification to Generator Defendants of such amendments by U.S. EPA. Generator Defendants shall only be required to comply with such amendments for sampling or analyses conducted subsequent to

or notification is extended to the next working day following the weekend or holiday.

C. Upon the occurrence of any event during performance of the Work which, pursuant to § 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, the Settling Defendant responsible for that portion of the Work shall promptly orally notify the U.S. EPA Project Manager ("RPM") and IDEM Project Manager, or in the event of the unavailability of the U.S. EPA RPM, the Emergency Response Section, Region V, United States Environmental Protection Agency, in addition to the reporting required by § 103. Within 20 days of the onset of such an event, such Defendant shall furnish to plaintiffs a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, such Defendant shall submit a report setting forth all actions taken to respond thereto.

D. Generator Defendants shall report verbally within 5 business days of becoming aware of any event or occurrence which is likely to cause delay in performance of the work.

E. During the post-termination monitoring period, after the additional studies have been completed, reports must be submitted on an annual basis promptly following the annual monitoring.



burden of proving that a document is subject to a claim of privilege shall lie with the party asserting the claim.

XVII.

REIMBURSEMENT

A. Generator Defendants shall pay all oversight costs of the United States and the State, not inconsistent with the NCP, incurred after the entry of this Consent Decree in overseeing implementation of the Work. Payments shall be made on an annual basis. The State agrees that it will not engage an independent contractor to oversee implementation of this Decree.

B. Payments shall be made as specified in this subparagraph B. In consideration of and upon payment of all oversight costs as required by this subparagraph the United States and the State covenant not to sue any Generator Defendant for oversight costs incurred in overseeing the Work. The United States and the State shall submit their oversight cost claims in January of each year until the Certification of Completion is signed. The U.S. EPA and the State shall submit an accounting to the Generator Defendants of all oversight costs incurred by the U.S. EPA and the State with respect to this Consent Decree during the previous year. Within ninety (90) calendar days of receipt of such accounting, the Generator Defendants shall remit a certified check to the U.S. EPA, payable to "EPA Hazardous Substances Superfund," and delivered to the U.S. EPA, Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, and a copy of such check shall be sent to

the Director, Waste Management Division, U.S. EPA Region V, and to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice. The Generator Defendants shall, within a like period, submit a certified check in the full amount claimed by the State, to the "Indiana Department of Environmental Management," which shall be delivered to the Office of the Attorney General of the State of Indiana. With respect to oversight costs incurred after January 1 in the final year of performance under this Consent Decree, at the time the United States and the State plan to terminate this Consent Decree, Generator Defendants shall, within thirty (30) days of the submission of an itemized cost statement and supporting documentation by the United States and the State, before termination of this Consent Decree, pay such oversight costs that are not inconsistent with the NCP. Generator Defendants reserve the right to contest, through the dispute resolution process provided in this Consent Decree, whether such costs were actually and appropriately incurred in accordance with law in connection with oversight of the work performed by Settling Defendants under this Consent Decree. On a quarterly basis, the U.S. EPA shall provide the Generator Defendants with a computer generated report, currently known as the SPUR report, listing costs attributable to the Facility. The State will provide similar accounting information, documenting its oversight costs, on a quarterly basis.

Defendant's obligations to perform post-termination maintenance of the fence and signs, cap and flood protection measures, shall survive the termination of this Consent Decree, and shall be enforceable by the United States by reinstitution of this action or by institution of a new action.

IT IS SO ORDERED.

Date:

4.24.91

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United States District Judge

The undersigned Settling Defendant hereby consents to the  
foregoing Consent Decree in U.S. and State of Indiana v.  
Richard Yount, et al.

GENERAL MOTORS CORPORATION

By:



Date:

9/29/89

# Attachment 3

*Bruff*

IN THE HUNTINGTON CIRCUIT COURT  
STATE OF INDIANA  
1994 TERM

RECEIVED

MAR 21 1994

LAW DEPT.

GENCORP INC.,  
GENERAL MOTORS CORP.,  
DANA CORPORATION,  
OWENS-ILLINOIS, INC., and  
GENERAL ELECTRIC COMPANY  
(AS SUCCESSOR TO RCA  
CORPORATION),  
Plaintiffs,

v.

UNITED TECHNOLOGIES CORP.  
(ESSEX GROUP),  
Defendant.

CAUSE NO. 35C01-9109-CP-00446

FINAL JUDGMENT BY CONSENT OF ALL PARTIES

All parties having consented hereto, and the Court  
having determined that entry of this Final Judgment is  
appropriate based on the facts and applicable law;

It is, therefore, ORDERED, ADJUDGED AND DECREED as  
follows:

1. Judgment is entered as follows on all of  
Plaintiffs' claims against Defendant:

a. In satisfaction of Plaintiffs' claims against  
Defendant for Defendant's alleged breach of the Marion-Bragg PRP  
Participation Agreement by the underpayment of past assessments  
by the Marion-Bragg PRP Group ("PRP Group"), within ten (10) days  
after entry by the Court of this Final Judgment, Defendant shall  
pay to Plaintiffs the respective amounts as indicated:

To Plaintiff GenCorp, Inc.	\$370,591.43
To Plaintiff General Motors Corp.	\$114,423.86
To Plaintiff Dana Corporation	\$ 34,988.11
To Plaintiff Owens-Illinois, Inc.	\$ 32,782.60
To Plaintiff General Electric Company (as successor to RCA Corporation)	\$164,244.18

After these payments have been completed, all parties including Defendant will be deemed to have paid in full all assessments issued by the PRP Group prior to the "1994 Call for Funds," dated January 13, 1994.

b. Defendant shall pay, when due, 27.50% of all future assessments by the PRP Group; and the balance of such future assessments shall be paid by Plaintiffs, according to the respective percentages as indicated:

By Plaintiff GenCorp, Inc.	36.50%
By Plaintiff General Motors Corp.	11.27%
By Plaintiff Dana Corporation	3.44%
By Plaintiff Owens-Illinois, Inc.	3.23%
By Plaintiff General Electric Company (as successor to RCA Corporation)	18.06%

c. Respecting any amounts obtained by the PRP Group on account of the PRP Group's pending claim against the Hazardous Substances Superfund, as authorized by Sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. ("CERCLA") ("Mixed Funding Claim"), Defendant shall be entitled to receive from the PRP Group 27.50%, and Plaintiffs each shall be entitled to receive their respective percentages as indicated above in paragraph 1(b); provided, however, that (i) Defendant shall immediately pay over to Plaintiffs, in the respective amounts as indicated, the first \$200,000.00 which Defendant shall be

entitled to receive on account of said Mixed Funding Claim  
("Supplemental Mixed Funding Shares"):

To Plaintiff GenCorp, Inc.	\$ 65,000.00
To Plaintiff General Motors Corp.	\$ 20,200.00
To Plaintiff Dana Corporation	\$ 6,200.00
To Plaintiff Owens-Illinois, Inc.	\$ 5,800.00
To Plaintiff General Electric Company (as successor to RCA Corporation)	<u>\$102,800.00</u>
Total:	\$200,000.00

and provided further that (ii) if Plaintiffs have not received their full Supplemental Mixed Funding Shares by December 31, 1994, then Defendant shall pay to each Plaintiff, on or before January 31, 1995, an amount sufficient to guarantee that each Plaintiff shall receive its full Supplemental Mixed Funding Share as provided above in paragraph 1(c)(i), in addition to the respective amount each Plaintiff shall receive from Defendant pursuant to paragraph 1(a), above. After Plaintiffs have received their full Supplemental Mixed Funding Shares, Defendant shall be entitled to receive from the PRP Group 27.50% of any and all amounts obtained by the PRP Group on account of the Mixed Funding Claim.

d. Except as otherwise provided above in paragraph 1(c), respecting any and all amounts obtained by the PRP Group from parties who are not members of the PRP Group and not parties to this Final Judgment (including but not limited to non-parties who are alleged to be liable pursuant to CERCLA Sections 107(a) or 113(f), 42 U.S.C. §§ 9607(a), 9613(f), for a portion or all of the costs of the response action performed by the PRP Group at the Marion-Bragg Superfund Site in Grant County, Indiana),



Plaintiffs and Defendant each shall be entitled to receive their respective percentages as indicated above in paragraph 1(b).

2. Defendant shall recover nothing on its claims against Plaintiffs in this action, and all of Defendant's claims, including its Counterclaims and Amended Counterclaims, are dismissed with prejudice.

3. Plaintiffs' claims against Defendant in this action, including their Complaint, are completely satisfied by and merged into this Final Judgment.

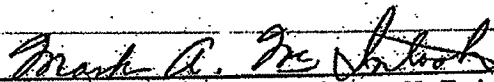
4. No prejudgment interest is awarded.

5. No costs or attorneys' fees are awarded.

6. The parties shall keep confidential the terms of this Final Judgment, except as may be necessary to obtain its enforcement or as may otherwise be required by law.

7. This Court will retain jurisdiction over this matter to ensure compliance by all parties with this Final Judgment.

Entered this 16<sup>th</sup> day of March, 1994.



The Honorable Mark A. McIntosh, Judge  
of the Huntington Circuit Court

CONSENTED TO  
AND AGREED:

BY PLAINTIFFS

GENCORP, INC.

/s/ Thomas M. Skove

BY DEFENDANT

UNITED TECHNOLOGIES CORP.  
(ESSEX GROUP)

/a/ William F. Leikin

BOWERS BREWER GARRETT & WILEY

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Attorneys for Defendant  
United Technologies  
Corporation

GENERAL MOTORS CORPORATION

/s/ Don A. Schiemann

DANA CORPORATION

/s/ Lisa A. Wurster

OWENS-ILLINOIS, INC.

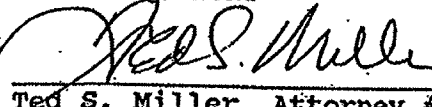
/s/ Robert Towles

GENERAL ELECTRIC COMPANY  
(as successor to RCA  
Corporation)

/s/ Teri R. Simon

BARRETT & MCNAGNY

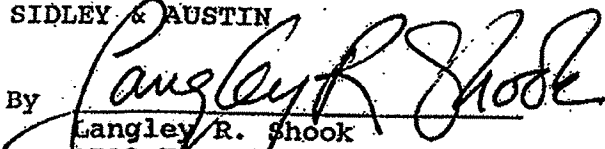
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General Electric Company

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CONSENTED TO  
AND AGREED:

BY PLAINTIFFS

GENCORP, INC.

Thomas H. Stone

BY DEFENDANT

UNITED TECHNOLOGIES CORP.  
(ESSEX GROUP)

BOWERS BREWER GARRETT & WILEY

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United Technologies  
Corporation

GENERAL MOTORS CORPORATION

\_\_\_\_\_  
DANA CORPORATION  
\_\_\_\_\_

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TO 83176396444

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CONSENTED TO  
AND AGREED:

BY PLAINTIFFS  
GENCORP, INC.

BY DEFENDANT

UNITED TECHNOLOGIES CORP.  
(ESSEX GROUP)

*W. A. McLaughlin*

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Corporation

GENERAL MOTORS CORPORATION

DANA CORPORATION

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CONSENTED TO  
AND AGREED:

BY PLAINTIFFS

GENCORP, INC.

BY DEFENDANT

UNITED TECHNOLOGIES CORP.  
(ESSEX GROUP)

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GENERAL MOTORS CORPORATION

*Don A. Schiemann*

DANA CORPORATION

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OWENS-ILLINOIS, INC.

Robert Towler

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(as successor to RCA  
Corporation)

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Attorneys for Plaintiff  
General Electric Company



# Attachment 4

**MARION BRAGG  
ESTIMATE OF COSTS  
TECHNICAL SUPPORT**

Activities	Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Groundwater and Surface Water Monitoring																		
5th Quarter Sampling and Reporting			\$ 25,000	\$ 25,000	\$ 25,000	\$ 45,000												
5-Year Review Report Sampling and Reporting		\$ 5,000					\$ 5,000											
Monitoring Well Abandonment																		
Off-Site Monitoring Wells (3)		\$ 15,000																
Monitoring Well Maintenance and Replacement						\$ 30,000												
On-Site Monitoring Wells (All)																		
Technical Support/Consulting		\$ 5,000	\$ 3,750	\$ 3,750	\$ 3,750	\$ 11,250	\$ 750	\$ 3,750	\$ 3,750	\$ 3,750	\$ 6,750	\$ 750	\$ 3,750	\$ 3,750	\$ 3,750	\$ 6,750	\$ 1,000	\$ 6,750
Subtotal		\$ 25,000	\$ 28,750	\$ 28,750	\$ 28,750	\$ 88,250	\$ 5,750	\$ 28,750	\$ 28,750	\$ 28,750	\$ 61,750	\$ 5,750	\$ 28,750	\$ 28,750	\$ 28,750	\$ 51,750	\$ 6,000	\$ 51,750
Escalation (Annual Rate)		0%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Subtotal		\$ 25,000	\$ 29,613	\$ 30,501	\$ 31,416	\$ 97,075	\$ 6,068	\$ 34,329	\$ 35,359	\$ 36,420	\$ 67,622	\$ 7,728	\$ 39,797	\$ 40,991	\$ 42,220	\$ 78,277	\$ 6,348	\$ 83,044
Contingency (Annual Rate)		0%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Subtotal		\$ 25,000	\$ 28,750	\$ 28,750	\$ 28,750	\$ 88,250	\$ 5,750	\$ 28,750	\$ 28,750	\$ 28,750	\$ 51,750	\$ 5,750	\$ 28,750	\$ 28,750	\$ 28,750	\$ 51,750	\$ 6,000	\$ 51,750
Contingency (10%)		\$ 2,500	\$ 2,875	\$ 2,875	\$ 2,875	\$ 8,825	\$ 575	\$ 2,875	\$ 2,875	\$ 2,875	\$ 5,175	\$ 575	\$ 2,875	\$ 2,875	\$ 2,875	\$ 5,175	\$ 600	\$ 5,175
Total		\$ 27,500	\$ 31,625	\$ 31,625	\$ 31,625	\$ 94,875	\$ 6,325	\$ 31,625	\$ 31,625	\$ 31,625	\$ 66,925	\$ 6,325	\$ 31,625	\$ 31,625	\$ 31,625	\$ 66,925	\$ 6,600	\$ 88,925

Total (Rounded) \$800,000

**MARION BRAGG**  
**ESTIMATE OF COSTS**  
**ADMINISTRATIVE SUPPORT**

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Severidge & Diamond, PC	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000
Indiana Department of Environmental Management	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
Hazardous Substances Response Trust Fund	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
EPA	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500
Subtotal	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500
Inflation (Annual Rate)	0%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Subtotal	\$ 28,500	\$ 28,355	\$ 30,298	\$ 31,143	\$ 32,077	\$ 33,039	\$ 34,030	\$ 35,051	\$ 36,103	\$ 37,186	\$ 38,302	\$ 39,451	\$ 40,634	\$ 41,853	\$ 43,109	\$ 44,402	\$ 45,734
Discount (Annual Rate)	0%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Subtotal	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500	\$ 28,500
Contingency	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850	\$ 2,850
Total	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350	\$ 31,350

Subtotal (Rounded) \$ 530,000  
Total from previous page \$ 600,000  
Grand Total (Rounded) \$ 1,130,000